Supreme Court of the United States.

No. 212.—October Term, 1902.

The Knoxville Water Company, Plaintiff in Error, vs. The Mayor and Aldermen of the City of Knoxville. } In error to the Supreme Court of the State of Tennessee.

[March 23, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a complaint for a penalty against the Knoxville Water Company for charging and collecting water rates in excess of the rates fixed by the ordinances of the city of Knoxville. The water company pleaded that the ordinances relied on violated the obligation of contracts between the city and itself, and deprived it of its property and liberty without due process of law, and so was contrary to the Constitution of the United States. The case was tried on appeal before a single judge, who made a special finding of facts, on which the Supreme Court of the State entered a final judgment for the plaintiff. 107 Tenn. 647. The company then brought the constitutional questions here by writ of error.

The water company was incorporated in Tennessee in 1882 to construct waterworks in or near Knoxville, with power to contract with the city and inhabitants for the supply of water, and to "charge such prices for the same as may be agreed upon between said company and said parties." This incorporation was under a general act which provides as follows: "And this Act is in no way to interfere with or impair the police or general powers of the corporate authorities of such city, town or village, and such corporate authorities shall have power by ordinance to regulate the price of water supplied by such company." Acts of 1877, c. 104, § 2. In the same year, 1882, the company made a contract with the city by which it agreed to construct its works and to furnish water, the city gave the company exclusive privileges for thirty years and agreed to make certain payments, &c., and it was mutually agreed, among other things, that, after fifteen years, the city should have the right to purchase the works at a price to be fixed by appraisers if not agreed upon. The contract contained three distinct parts, first, the promises of the company; next, those of the city, and last, the mutual undertakings. In the first part the company

PAGE CUT OFF

undertook as follows: "Said company will supply private consumers with water at a rate not to exceed five cents per one hundred gallons," subject to an immaterial proviso. These are the words relied on by the company. They are assumed to contain an implied undertaking on the part of the city not to interfere with the company in establishing rates within the contract limits.

After the contract was made the company built its works and furnished water. Later it took over contracts between two other concerns and neighboring towns and consolidated with one of the other concerns, which was a corporation. The towns on their side were made a part of Knoxville and the whole water supply was brought under the original contract. But these facts do not alter or affect the present case and need not be stated in detail. The company went on furnishing water and charging rates within the contract limit, to the satisfaction of the city, it may be assumed, until within a year or two, when the city passed an ordinance which cuts down the rates which the company had been charging, and asserts its right to charge.

The trouble at the bottom of the company's case is that the supposed contract on which it is founded does not exist. If such a contract had been intended it was far too important to be left to implication. In form the words are the words of the company alone. They occur in the part of the contract which sets forth the company's undertakings, not in the part devoted to the promises of the city or in that which contains the still later mutual agreements. See *Georgia Railroad & Banking Co.* v. *Smith*, 128 U. S. 174; *Ragan* v. *Aiken*, 9 Lea, 609. They are words of a company which was notified by the act which called it into being of the power expressly conferred upon the city "by ordinance to regulate the price of water" which the company might supply. People who have accepted, as experience shows that people will accept, a charter subject to such liabilities cannot complain of them or repudiate them, nor can the company which they have formed. *Rockport Water Co.* v. *Rockport*, 161 Mass. 279. This consideration answers a portion of the company's argument as to its rights under the Fourteenth Amendment, and makes it unnecessary to consider whether the regulation of water rates is properly to be classed as a police power. It also reinforces our interpretation of the instrument upon which the company found its claim.

We do not mean that under other circumstances words which on their face only express a limit might not embody a contract more extensive than their literal meaning. *Detroit* v. *Detroit Citizens' Street Ry. Co.*, 184 U. S. 368. But in that case the rate was fixed by an ordinance which was the language of the city, the ordinance was under a statute which declared that the rates should be established by agreement between the

city and the railway company, and neither statute nor ordinance reserved a power to the city to alter rates. In the present case it seems to us impossible to suppose that any power to contract which the city may have had was intended to be exercised in such a way as to displace the municipal power expressly reserved or given by the general law under which the water company was created. It would require stronger words than those used here to raise the question whether, under the statutes in force, the city could do it if it tried. The contracts fixing prices authorized by the statute were contracts between the company and its customers, not, as in the case of the railway company, a single contract between the company and the city, and were subject to the power to regulate them given to the city by the same statute. We assume that the charter of the city authorized it to contract, but it was not so specific as the statute which we have quoted, and added nothing to the power conferred by that law.

With the construction which we give the contract between the company and the city the argument that the obligation of that contract is impaired must fall. It is argued here that the reduction of rates is not reasonable, and is or may be taking a first step towards a compulsory purchase of the company's plant at an unfairly low price, by cutting down its value. We may assume with the Supreme Court of Tennessee that if rates were reduced unreasonably a judicial remedy would be found. We may assume further that an attempt to affect the price of the company's plant in that way, if the city should elect to purchase, would not be allowed to succeed. But no such questions are before us. There is no evidence and no presumption that the ordinance rates were unreasonable or were fixed with sinister intent. The judgment of the Supreme Court of Tennessee states that the question was not considered by it, and is expressed to be without prejudice to later litigation concerning the reasonableness of the rates. If the question is open here it is open only in form, and no error is shown.

A part of the argument was directed against the validity of the ordinance because of a failure to notify an alderman who was out of the State, but we see no sufficient ground for undertaking to revise the judgment of the State court on that point.

Some argument was attempted as to the ordinance impairing the obligation of the contracts between the company and its consumers. But such contracts, of course, were made by it subject to whatever power the city possessed to modify rates. The company could not take away that power by making such contracts. *New Orleans* v. *New Orleans Waterworks Co.*, 142 U. S. 79, 91, 92; *Browne* v. *Turner*, 176 Mass. 9, 15. The contracts recognize the possibility of change, as the agreement is to pay for the water in accordance with the rates "now or hereafter in force." This constitutional objection hardly is open on the pleadings, but we have

given the company the benefit of the doubt so far as to consider it. We discover no error in the record, and the judgment of the Supreme Court of Tennessee must be affirmed.

Judgment affirmed.

Mr. Justice WHITE, Mr. Justice MCKENNA and Mr. Justice DAY, not having been present at the argument, took no part in the decision of the case.

True copy.

Test:

Clerk Supreme Court, U. S.